

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROCKSTAR, INC.,)	
)	Case No.: 2:09-cv-01499-GMN-GWF
Plaintiff,)	
vs.)	ORDER
)	
ORIGINAL GOOD BRAND CORPORATION,)	
)	
Defendant.)	
)	

Before the Court is Plaintiff Rockstar, Inc.’s, (“Rockstar”) Motion for Default Judgment (Doc. No. 48). A proposed Order did not accompany the motion. Defendant Original Good Brand Corporation, (“OGB”), having made an appearance¹, was served by Plaintiff with a copy of the motion but OGB has nonetheless failed to file any opposition contesting the amount of damages.

Plaintiff's motion is made pursuant to Rule 55(b) of the Federal Rules of Civil Procedure. Plaintiff bears the burden of proving entitlement to the sum sought in its motion; whether to enter a judgment by default is a decision entrusted to the sound discretion of the district court. *See Bender Shipbuilding & Repair Co., Inc., v. Vessel DRIVE OCEAN V*, 123 F.Supp 2d 1201, 1208 (S.D. Cal. 1998), *aff'd*, 221 F.3d 1348 (9th Cir. 2000).

The Court has considered the following factors: (1) the possibility of prejudice to plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning the material facts; (6) whether defendant's default was the product of excusable neglect, and


¹ Given the judicial philosophy disfavoring default judgments, the courts may search to find that an appearance has occurred. See *Franchise Holding II, LLC v. Huntington Restaurants Group, Inc.*, 375 F.3d 922, 927 (9th Cir. 2004).

1 (7) the strong public policy favoring decisions on the merits. *See Eitel v. McCool*, 782 F.2d
2 1470, 1471 (9th Cir. 1986).

3 It appearing that a proper factual basis exists for the court's award, the court will
4 forego a hearing. Despite the strong public policy favoring decisions on the merits,
5 Defendant's default occurred after it filed an Answer and Counterclaim. Defendant wholly
6 failed to wage a defense. A review of Plaintiff's motion plainly demonstrates that Plaintiff's
7 complaint is sufficient, the claims are likely meritorious and Plaintiff will suffer further
8 prejudice without a judgment because Defendant OGB will not pay the amount owed
9 without a judgment. The sum at stake directly corresponds to the amount contemplated in
10 the parties' agreement and there is little possibility of a dispute concerning the material facts.

11 Accordingly, the Court exercises its discretion and hereby enters a default judgment
12 in favor of Plaintiff Rockstar, Inc. and against Original Good Brand Corporation, in the
13 amount of \$4,522,567.42, plus interest.

14 DATED this 6th day of April, 2011.

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18 Gloria M. Navarro
19 United States District Judge
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